IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 40 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ARVIND MILLS LTD.

Appearance:
MR MANISH R BHATT for Petitioner

MR JP SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

MR.JUSTICE A.R.DAVE

Date of decision: 05/09/2000

ORAL JUDGEMENT

Per Dave,J.:-

At the instance of the revenue,the following questions have been referred to this court for its opinion under the provisions of section 256 (1) of the Income tax Act,1961 (hereinafter referred to as `the Act'):

(i) Whether on the facts and in the circumstances of the case, the assessee is entitled to allowance in regard to reimbursement of medical expense and personal accident insurance premium paid to Managing Director as claimed ?

(ii) Whether, on the facts and in the circumstances of the case, reimbursement of medical expenses and personal accident insurance premium paid to Managing Directors cannot be regarded as perquisite for the purpose of disallowance u/s 40 (c) of the Income tax Act,1961 ?

(iii) Whether, on the facts and in the circumstances of the case, the cash payment of house rent allowance amounting to Rs.39,870.-0 cannot be treated in law as a part of salary and disallowed under section 40A (5) of the I.T Act, 1961 ?

(iv) Whether,the assessee is entitled to extra shift allowance on exhaust fans costing Rs. 42, 460/- on the facts and in the circumstances of the case ?

Learned advocates appearing for the parties have submitted that all the questions have been decided either by this court or by the Supreme Court.

So far as the first and second questions are concerned, they are interconnected as they pertain to admissibility of expenses and their disallowance under the provisions of section 40 (c) of the Act. Reimbursement of medical expenses of the Managing Directors and premium of

personal accident policy of the Managing Directors cannot be treated as admissible expenditure for the reason that the said expenditure was incurred by the assessee only for the benefit of the Managing Directors. It has been observed by the Assessing Officer that benefit of insurance money was to be derived by the Managing Directors, and in the circumstances, claim for deduction of the said expenditure was rightly rejected by the Assessing Officer. This court has taken similar view in case of CIT vs. Raipur Manufacturing Company,231 ITR 598 where the question was with regard to admissibility of expenditure which was in the nature of reimbursement of medical expenses of Managing Directors. Similarly, in case of CIT vs. Cama Motors Pvt.Ltd., 234 ITR 699, it has been held by this court that when the premium is paid on an insurance policy which is taken for the benefit of a Managing Director, the amount of insurance premium paid cannot be considered to be an admissible expenditure. Thus, questions No.1 and 2 are answered against the assessee and in favour of the revenue.

So far as the third question is concerned, which pertains to cash payment of house rent allowance , it has been answered in favour of the assessee and against the revenue by the Supreme court in the case of CIT vs. Mafatlal Gangabhai and Company Private Limited, 219 ITR 644.In the circumstances, the said question is answered in favour of the assessee and against the revenue.

So far as question No.4 is concerned, it pertains to entitlement to extra shift allowance on exhaust fans .The said question has also been covered by a decision in ITR No.27 of 1984 decided by this Court.It has been held in the said case that such an extra shift allowance is not admissible as exhaust fans, which are electrical machinery, do not form integral part of textile machinery. In the circumstances, the said question is answered against the assessee and in favour of the revenue.

Thus,the questions referred to hereinabove are answered as under :

The first and second questions are answered against the assessee and in favour of the revenue.

Question No.3 is answered in favour of the assessee and against the revenue.

Question No.4 is answered against the assessee and in favour of the revenue.

Reference is disposed of accordingly with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave,J.)

parekh